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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,402	04/23/2001	Robert D. Kluser	7201 US	6386

7590

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Francis I. Gray  
MS 50-LAW  
TEKTRONIX, INC.  
P.O. Box 500  
Beaverton, OR 97077

EXAMINER

ANDERSON, GERALD A

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/841,402

Applicant(s)

KLUSER ET AL.

Examiner

JERRY A ANDERSON

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-- Th MAILING DATE of this communication appears on th cover sheet with the correspondenc address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed 27 November 2002 have been fully considered but they are not persuasive. The applicant argues that Eriksson does not teach a frame and a sleeve. The Examiner disagrees. Figure 2 clearly shows a sleeve (not numbered) which can slide into either side of a frame or cubicle. The applicant argues that Erickson has components mounted in it. The Examiner fails to see how the applicant's device without components is distinguished from a device with components. It is well settled in case law that the elimination of a part and its function is an obvious matter of design choice for one having an ordinary skill in the art. The applicant argues that Jefferies does not teach spring elements of a latch system mounted on sides of a rigid frame. Jefferies is not cited as a reference because it is the same thing as the applicant's device. The applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Jefferies teaches a latch system using a button on a spring mounted to one part which engages a hole in a second part as the second part moves into position on the first part. This latch system can obviously be used to position and retain the part (the sleeve) of Erickson which slides into the cubicle. The applicant argues that the parts of Saunders snap fit and that the applicant's part "mesh". The Examiner fails to see how the term "mesh" distinguishes the claimed device over Saunders. The pins 28 of

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Saunders "mesh" with the holes 31, the snap members 24 "mesh" with the shelf 26. You can call these parts "interlocking fingers", which is what the disclosure actually states.

The Examiner cannot even find support of the term "mesh" in the disclosure.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "a frame" with "a left and a right portion" having "interlocking fingers" that are "press fit", and maybe "spot welded", and "a central rib", sleeves with holes and "snapper and latch system" having either "a spring plate" with "a support end" and "a spring end" with a button or "a spring steel ribbon" with a button, does not reasonably provide enablement for "a rigid frame having a top, bottom and pair of sides" in claim 1, "a spring" in claims 2, 5 and 6, "a left bracket having a side, a top and a bottom" and "a right bracket having an opposing side, a top and a bottom", "the tops and bottoms meshing with each other" in claim 3. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to understand the meets and bounds of the invention commensurate in scope with these claims. The terms used in the claims must be fully supported by the disclosure.

***Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eriksson et al in view of Jefferies et al and Saunders et al. Eriksson is cited showing a modular rack-mounting system having a frame having a left side 1b and a right side 1a, chambers are formed in each side, generally shown with a seal 12 in Figure 2 but note that in the right side above the exposed sleeve a chamber is shown divided by a central rib so that two sleeves can be mounted in a chamber. Eriksson fails to show a spring mounted button in a hole or a frame having two parts which are press fitted and maybe welded. This is an application claims the invention as an apparatus. Thus the steps or way in which the frame is formed carries no weight. It is the product alone which must be patentable distinguished from the prior art. Jefferies is cited

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showing a latching system for retaining a modular carrier for an electrical device in a support structure. The carrier providing a means of securing the device to the carrier having spring mounted buttons engaging holes. Saunders is cited showing parts which mesh to provide a frame for electrical devices. Since the references are from the same field of endeavor the purpose of Jefferies and Saunders would have been obvious in the pertinent art of Eriksson at the time of the invention it would have been obvious for one having an ordinary skill in the art to have modified Eriksson with spring mounted buttons in holes in the frame providing a means of securing a sleeve to the frame in view of Jefferies and with a parts which mesh to provide a frame for electrical devices in view of Saunders.

***Allowable Subject Matter***

Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

This action is NOT FINAL because a new rejection of the claims is made under 35 U.S.C. 112, first paragraph.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Anderson whose telephone number is 703 038 2202. The examiner can normally be reached on Monday-Friday.

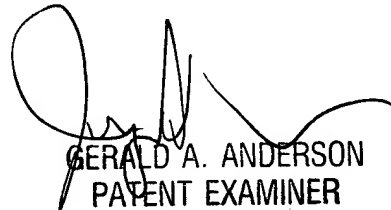
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703 308 24668. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703 305 3597 for regular communications and 703 306 4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 2197.

Jaa  
February 24, 2003



GERALD A. ANDERSON  
PATENT EXAMINER